

AGREEMENT FOR OAK CREEK TO PROVIDE WATER AT
WHOLESALE TO FRANKLIN

This Agreement, made this 4th day of April, 1994, by and between the City of Oak Creek and the Oak Creek Water and Sewer Utility (hereinafter referred to "Oak Creek") and the City of Franklin and the Franklin Water Utility (hereinafter referred to as "Franklin").

WHEREAS, Franklin desires to purchase water from Oak Creek at wholesale and at rates which are approved by the Public Service Commission of Wisconsin, (hereinafter referred to as "the PSC") and at standards of service which are prescribed by the PSC.

WHEREAS, Oak Creek has constructed and will continue to construct facilities within the City of Oak Creek to ensure that Franklin receives an adequate water supply and Oak Creek will continue to maintain said facilities and

WHEREAS, Oak Creek must be assured that Franklin will continue to obtain its water supply from Oak Creek so that Oak Creek may prudently plan expansion of its facilities and so that such facilities, when constructed, will be utilized as fully as possible.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth in this agreement, Franklin and Oak Creek agree as follows:

1. SERVICE AREA Oak Creek shall provide water at wholesale to the entire city of Franklin, except that portion of Franklin presently being served by the city of Milwaukee under a thirty (30) year retail service agreement and except that portion of Franklin presently being served by the city of Oak Creek under two separate thirty (30) year retail service agreements.

2. CONSTRUCTION Franklin, at its sole expense, effort and risk, shall construct all metering stations located in Franklin and required to convey and measure water supply to Franklin. Franklin shall prepare all required engineering plans, drawings, diagrams, specifications and other related documents. Franklin shall prepare all required construction contracts, advertisement for bids; award contracts to a successful bidder and shall obtain required property rights and/or easement rights and/or any other approval necessary for the installation of such improvements in Franklin. All plans and specifications must conform to Oak Creek standards and shall be approved by Oak Creek prior to the time that contracts are awarded or materials are purchased for construction of metering stations. Plans and specifications shall be deemed to be approved by Oak Creek unless Franklin receives written notice from Oak Creek within thirty (30) days of the date that plans and specifications are submitted to Oak Creek of Oak Creek's rejection of or objection to said plans and specifications. Any facility will be deemed to be approved as constructed if Oak Creek fails to notify Franklin of its approval or rejection within twenty (20) days after Oak Creek has received written notification that such construction is ready for final inspection. All construction work incidental to construction of metering stations shall be

inspected by Oak Creek in accordance with Oak Creek inspection standards. All construction inspection services shall be provided by Oak Creek. All construction inspection costs and any resulting inspection fees for metering stations that are required prior to the time that such facilities are placed in operation shall be paid by Franklin. Franklin shall pay all costs, charges, fees and expenses incidental to construction, maintenance and operation of the water distribution system located within the corporate limits of Franklin, except that water meters including recording and measuring devices shall be supplied and installed by Oak Creek. Franklin retains and shall have the sole right to assess benefited property owners in Franklin for the cost and expense of operation, maintenance, repair and replacement of the water system within the City of Franklin.

3. OPERATION AND MAINTENANCE Oak Creek shall, at its sole cost and expense, operate, maintain or repair and replace all parts of the water delivery system which provides the water as set forth in this agreement which are located in the City of Oak Creek. Oak Creek grants to Franklin authority to install flow control equipment at interconnection points between the two systems. Oak Creek retains and shall have the sole right to assess benefited property owners in Oak Creek for the cost and expense of operation, maintenance, repair and replacement of the water system within the City of Oak Creek.

4. RATES Franklin shall be a wholesale customer of Oak Creek. Customers of Franklin shall be retail customers of Franklin. Franklin shall be solely responsible for billing and collection of all fees or charges from its retail customers for water service. If Oak Creek receives payments for services provided by Franklin from retail customers, Oak Creek shall promptly deliver and endorse such payments to Franklin. The initial rate of charges for services at wholesale for water supplied to Franklin by Oak Creek shall be \$1.34 per thousand gallons until such time as a cost of service basis of charge has been established by the PSC. The initial wholesale rate of \$1.34 per thousand gallons shall cover all commodity and fixed excess demand related charges inclusive of public fire protection charges. The schedule of water rates shall be subject to modification during the term of this agreement provided that such changes are approved by the PSC. Oak Creek shall submit invoices to Franklin on a quarterly basis. A reasonable rental fee for the operation, maintenance and repair of metering and demand measuring devices will be charged to Franklin and incorporated in the quarterly service fee as approved by this PSC. All such invoices shall be payable to Oak Creek within twenty (20) days. If payments are not received within thirty (30) days a penalty of 1% per month on any delinquency shall be due and payable by Franklin.

5. WATER QUALITY AND QUANTITY Oak Creek shall provide water to Franklin which is safe for human consumption and which meets all primary drinking water quality standards from time to time established by the State and Federal governments. At the points water is transmitted from Oak Creek to Franklin the water shall be provided at a rate not to exceed 9.52 million gallons per day, inclusive of the Oak Creek retail districts within Franklin, measured at any point in time meeting the following criteria for each point (meter station):

<u>Meter Station</u>	<u>Maximum Flow (MGD)</u>		<u>Hydraulic Gradient Equivalent (HGE)</u>
	<u>1995 - 2000</u>	<u>2001-2010</u>	
27th & Rawson Ave.	2.5	3.0	870
27th & Drexel Ave.	2.5	3.0	870
27th & Puetz Road	2.5	3.0	870
27th & Ryan Road	3.0	3.0	870

The minimum hge shall be 870 (USGS datum) at each metering station at the downstream side of each meter at the locations noted above. The maximum flows shown are non-concurrent. The initial supply of water shall be at a rate not to exceed 4.5 million gallons per day, inclusive of the Oak Creek retail districts within Franklin, in 1995 measured at any point in time at the above criteria increasing approximately 334,700 gallons each succeeding year to a rate not to exceed 9.52 million gallons per day, inclusive of the Oak Creek retail districts within Franklin, in the year 2010, measured at any point in time at criteria shown above and thereafter shall meet maximum day demand. Oak Creek shall accept and analyze for bacteria the water samples taken by Franklin as deemed necessary by the Wisconsin Department of Natural Resources and shall provide Franklin with the tests results at cost. Oak Creek shall have no obligation to accept and analyze water samples for bacteria in the event Oak Creek does not maintain a laboratory certified by the State of Wisconsin.

6. **EMERGENCIES** The City may restrict use of water by Franklin as a result of the occurrence of any emergency, including but not limited to major firefighting, major hydrant flushing, major water main breaks or drought, which will effect the water pressure or other performance capabilities of the water system within Oak Creek. Whenever Oak Creek is unable to supply water service in accordance with the terms of this agreement Franklin may obtain emergency water service from any other source without violating the terms of this agreement but only for the specific period of time in which Oak Creek is unable to provide such supply.

7. **UNIFORMITY** Oak Creek shall not discriminate or differentiate in quality of service or in its rates between Franklin and other wholesale customers of the City.

8. **SOLE PROVIDER** Franklin shall obtain all of its water from Oak Creek except for water being received by Franklin customers under the thirty (30) year retail service agreement with the City of Milwaukee, and Oak Creek shall be the sole, exclusive provider of water to Franklin.

9. **EXPANSION** In the event that the corporate limits of Franklin shall be either extended or enlarged in any manner whatsoever as a consequence of any consolidation or merger of Franklin with any other municipality entity or political subdivision, there shall be no duty or obligation under this contract on the part of Oak Creek to provide water to any other area other than the service area as defined herein. Oak Creek reserves the option to provide water supply to

any expanded area of Franklin. Oak Creek shall have the first option to provide water supply to any expanded area of Franklin.

10. METER PITS Franklin shall furnish and install meter pits complete with meter setting but without meter. The meters, including total recording and measuring devices, shall be supplied and installed by the Oak Creek Water and Sewer Utility. Oak Creek shall pay all costs and expenses incurred as a result of testing metering devices.

11. RECORD ACCESS Franklin and Oak Creek shall create and maintain corporate records and record information relating to this agreement. The parties agree to allow representatives of the other party to evaluate and inspect documents, records and facilities of the other. Upon request of either party the other shall provide any requested information, documents or records at cost regarding any matters relating to the subject matter of this agreement or the construction or operation of the utility system. This paragraph 11 shall not be construed to eliminate any requirement for public record keeping in conformance with Wisconsin State statutes.

12. INSURANCE During the term of this agreement each party shall maintain at its sole expense, comprehensive general liability insurance in the minimum amount of \$1,000,000. Upon request each party shall provide evidence to the other party of the existence of an effective policy and the policy limits. Each party shall be named as additional insured on the insurance policy of the other party hereto. Each party shall properly notify the other if the policy limits are reduced or the policy is canceled or not renewed. In addition, each party shall, at its sole expense, obtain and maintain worker's compensation insurance covering its employees performing the services for that party in at least the minimum amounts required from time to time by applicable State of Wisconsin statutory requirements.

13. LEGAL RELATIONSHIP Nothing in this agreement shall be construed to create an employer/employee relationship, a joint venture relationship or a principal/agent relationship.

14. INDEMNIFICATION The parties understand and agree that this agreement is not one to ensure or indemnify the other and shall not be construed as such. Each party is solely responsible for its own negligence, acts or omissions. Each party assumes all liability for any damage or any claim or demand whatsoever in any manner arising or growing out of the construction, maintenance or operation of the transmission lines, water distribution system and meters referred to in this agreement.

15. MISCELLANEOUS

A. Franklin will not tax Oak Creek owned facilities located in Franklin.

B. This agreement shall be subject to applicable rules and regulations of Oak Creek which are on file with the PSC and as such rules and regulations may be amended from time to time.

C. If Oak Creek is required to pay any taxes to any political subdivision, including Franklin, assessed against Oak Creek facilities attributable to serving Franklin then the amount of said taxes so paid shall be an additional charge against Franklin and shall be billed on a quarterly basis as provided herein.

D. The failure of either party to insist on strict performance of any of the terms or conditions of this agreement shall not be construed as a waiver or relinquishment of any right granted under this agreement.

E. In the event that any portion of this agreement is held invalid or unenforceable such invalidity or unenforceability shall not affect the other portions of this agreement.

F. This agreement shall be binding upon and inure to the benefit of and be enforceable by the parties, their agents, employees, officers and directors. However, it is not intended by the parties hereto that this agreement in any way inure to the benefit of any third party.

G. This agreement shall be binding upon any successor organization or entity assigns or other successor political entity of either party to this agreement.

H. This agreement shall not be assigned by any of the parties hereto without the prior written consent of the other party.

I. This agreement may be modified only by a written amendment signed by all parties.

J. This agreement shall be governed and interpreted under the laws of the State of Wisconsin.

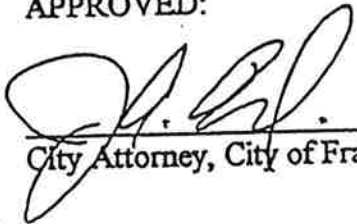
K. This agreement constitutes the entire agreement between the parties relating to the subject matter of this agreement. All prior understandings, agreements, correspondence and discussions of the parties are merged into and made a part of this agreement.

17. **NOTICE** Notices required by this agreement shall be in writing unless an emergency exists and shall be deemed given upon delivery in person or by first class mail postage prepaid to the other party at the following address:

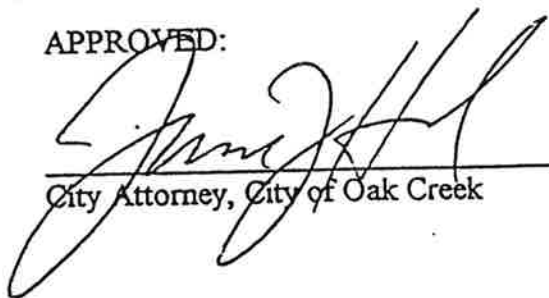
BOARD OF WATER COMMISSIONERS

By 
Chairman

APPROVED:


City Attorney, City of Franklin

APPROVED:


City Attorney, City of Oak Creek

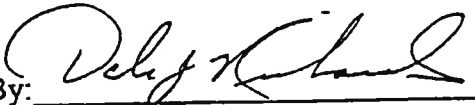
City of Franklin Water Utility
9200 West Loomis Road
Franklin, WI 53132

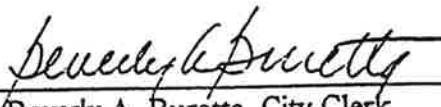
Oak Creek Water & Sewer Utility
170 West Drexel Avenue
Oak Creek, WI 53154

18. TERM OF THIS AGREEMENT The term of this agreement shall begin on the dates set forth above. The term shall end at midnight on the date preceding such date thirty (30) years thereafter. Thereafter this agreement shall be automatically renewed for three five year terms unless Franklin or Oak Creek provides one year prior written notice of its intent to not renew this agreement for any such renewal terms.



CITY OF OAK CREEK


By: 
Mayor Dale J. Richards

By: 
Beverly A. Buretta, City Clerk

BOARD OF WATER WORKS AND
SEWER COMMISSIONERS

By: 
William Spaciel, Chairman

CITY OF FRANKLIN

By: 
Mayor

By: 
City Clerk